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**BEFORE THE
STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

Application for Certification
For the San Francisco
Electric Reliability Project

Docket No. 04-AFC-1

Petition for Reconsideration of CARE

In behalf of Intervener Californians for Renewable Energy, Inc. (CARE) we hereby file the following petition for reconsideration.

Introduction

CARE requests reconsideration based on the following new information that was not considered by the Commission in approving the Application for Certification for the San Francisco Electric Reliability Project, SFERP, Docket 04-AFC-1.

Matters for Reconsideration

On August 14, 2006 the Applicant served a copy on the CEC Docket Unit of a 79 page letter sent that day to the California Department of Water Resources (DWR) from Barbara Hale of the SFPUC in response to DWR Questions, about the project. On August 23, 2006 CARE received this filing listed as docket log#37668 only after requesting it by e-mail of the Dockets Unit on August 22, 2006. CARE also requested this document be served on the Parties, which never took place. This document discloses that the Applicant, representatives of the DWR and CAISO carried out the public's business in secret, on August 4, 2006, without an opportunity for Interveners or the public to participate in these significant changes to the SFERP's description, design, and conditions of operation.

Evidence of the significance of the design change comes from the additional requirement that "the minimum amount of power that the SFERP must produce to meet

the CAISO Action Plan requirements is 48 MW per turbine, for a total of 192 MW. In order to meet the CAISO requirement, chillers will be required on all four turbines....Our current design would guarantee a total output of 190.7 MW.” [SFPUC letter to Mr. Haines at page 2]

Based on a meeting at CAISO on August 4, that included: Chuck Toney, Dave Alexander, and Jaime Medina, representing CDWR; Karen Kubick, of my staff; and Larry Tobias of CAISO, an agreement was reached, that the minimum amount of power that the SFERP must produce to meet the CAISO Action Plan requirement is 48 MW per turbine, for a total of 192 MW. In order to meet the CAISO requirement, chillers will be required on all four turbines. See the attached correspondence from Karen Kubick of the SFPUC to Chuck Toney of the CDWR, dated August 8, 2006. Our current design would guarantee a total output of 190.7 MW. The SFPUC is initiating a review to optimization design to identify the modifications and associated cost with increasing the total output by 1.3 MW.

There exists no evidence in the record to examine the impacts of running the four turbines in excess of their performance guarantees by the turbine vendor. No analysis of the affect of the chillers on the estimates of ground level concentrations of fine particulate matter (PM2.5) produced by the entire four turbine project along with PM10, VOCs, NOx, SOx, and Toxic Air Contaminants that will all have increased emission levels as a result of the Applicant’s unproven design. It isn’t surprising to us that the Commission would seek to obscure such information from the public view when the CEC never put CARE's briefs on its website for the public to read. Isn't that another piece of evidence showing that the CEC intends to discriminate against the low income, minority community of Bay View Hunters Point in San Francisco? There is no document on the website discussing this issue except for the CEC's documents.

Another example comes from the Applicant’s August 14, 2006 letter to DWR that points out that “in order for the SFERP to maintain site control, the project must be compliant with Federal Aviation Administration (FAA) regulations, providing for an ‘Airport purpose’,...A direct connection to the Airport’s power grid has been included in the SFERP to provide back-up power in the event of a regional outage. It is intended that this intertie would only be used in the event of an area wide outage of the PG&E

grid.....The Airport required a direct connection to meet the FAA requirement of an ‘Airport purpose,’ and to provide the regional benefit stimulated above.” [SFPUC letter to Mr. Haines at page 5]

The Airport has made it clear that in order for the SFERP to maintain site control, the project must be compliant with the Federal Aviation Administration (FAA) regulations, providing for an “Airport purpose”, see the attached letter from John Martin SFIA Director to Susan Leal SFPUC General Manager, dated May 5, 2005. The Airport benefit realized will ensure that during and after an emergency the SFIA will function to support the region. A direct connection to the Airport’s power grid has been included in the SFERP to provide back-up power in the event of a regional outage. It is intended that this intertie would only be used in the event of an area wide outage of the PG&E grid. The Airport and SFPUC Commissions approved a memorandum of understanding (MOU), April 30, 2004, allowing the SFERP to be sited at the airport. The MOU, which is provided as an attachment, stipulates that the SFPUC recognizes the FAA requirements and the intent to use the SFERP to supply emergency backup electric service to the Airport.

During the alternatives analysis phase, it was determined that PG&E, in cooperation with CAISO, could not guarantee response in time to allow for the transmission of energy through the PG&E grid within the allotted 30 minute minimum time frame, and that the preferred alternative would allow the Airport to be isolated from the PG&E system. Without system isolation, PG&E would require a minimum of 4 hours when there is a grid outage. PG&E would not provide a guaranteed time frame for response, see attached PG&E Supplemental Facilities Study, November 9, 2004 (Section 5.1.1). The Airport rejected all concepts that required dependence upon PG&E that would make the Airport reliant upon PG&E’s undefined regional priorities in times of an electrical emergency. The Airport required a direct connection to meet the FAA requirement of an “Airport purpose,” and to provide the regional benefit stimulated above.

The [SFPUC letter to Mr. Haines at page 6] estimates that it will cost the Applicant and additional \$5,248,000 for the required transmission system upgrades including \$348,000 for a diesel generator without any impact analysis in the record.

Therefore there is no reason that we are aware of, other than intent to discriminate against CARE’s low income people of color members impacted by the project, NOT to require the Applicant to site all four turbines at the SFIA, and require them to construct a

transmission interconnect between the SFIA and the Potrero substation, unless of course the Commission makes some findings for overriding considerations under CEQA, that CARE is unaware of?

The CEQA Guidelines require an evaluation of the comparative merits of “a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the project objectives” (Cal. Code Regs., tit. 14 §15126.6). The objectives of the applicant are listed on page 18 of the PMPD. These objectives are:

- Improve CCSF’s electricity reliability;
- Facilitate the shutdown of older, more polluting in-City generation; and
- Minimize local impacts of electrical generation.

[PMPD at page 18]

The City of Pittsburg California following the public hearing held by the City of Pittsburg, as CEQA Lead Agency, will consider certification of the Trans Bay Cable Project's Final Environmental Impact Report following the public hearing to be held in the City of Pittsburg Council Chambers, City Hall, 65 Civic Avenue, Pittsburg, on November 6, 2006.¹ The evidence of the record is that The Trans Bay Cable Project would likely have the least environmental impacts overall. (Exhibit 46 p. 6.1, PMPD p. 22)

“The evidence of record establishes that infrastructure improvements – a combination of both generation and transmission – are necessary to preserve electrical reliability in San Francisco. (Ex. 50, see Local System Effects section *infra*.) No evidence of record credibly challenges this fact. (PMPD page 15)” The SFERP in and of itself will not achieve the Applicants stated purpose of achieving electrical reliability. To achieve the Applicant’s goal of minimizing local impacts from electrical generation the Trans Bay Cable Project is clearly superior, unless of course the Commission makes some findings for overriding considerations under CEQA that CARE is unaware of?

The PMPD eliminates the Trans Bay Cable Project as the preferred alternative because by itself it would not meet CAISO requirements for generation north of the Martin Substation. (Ex. 46, pp. 6-1, 6-25, 6-34, 6-36, 6-42.) The Cal-ISO requirement is that the SFERP must provide 100 MW of in city generation in all contingencies to

¹ See Trans Bay Cable Project
http://www.ci.pittsburg.ca.us/pittsburg/pdf/tbc_feir/urs%20tbc%20feir/TBCNOC.htm

release the Potrero 3 unit from its RMR contract. The SFERP in of itself does not meet that requirement it requires the siting of a fourth turbine at the airport. The impacts of that turbine are not analyzed in the application or in the alternatives analysis. Also the record reflects that even with the fourth turbine at the airport the project will not meet the Cal-ISO generation standard of 100 MW to achieve the projects objective of closing the Potrero 3 unit. (RT 5-31 -06 p. 64 lines 8-19) Dedication of the airport turbine for airport use only in an emergency clearly further limits the SFERP's ability to meet the reliability criteria for the peninsula necessary to shut down the Potrero 3 unit.

The decision states that "as also discussed in other portions of this Decision, certification of the SFERP does not necessarily result in the closure of the existing Potrero units." In recent pleading by Mirant Potrero before the CPUC it appeared that their intentions we just the opposite to repower the facility stating "the development of replacement and repowered projects has been established as a priority, and that cost-based contracts between project developers and electrical corporations have been endorsed as a means to facilitate the necessary investment."²

While the SFERP may "facilitate" or "create the opportunity" for such closure, the evidence is clear that "...only the power plant owner (Mirant) can decide to retire their generator units." (Ex. 50, p. 3, lines 21-22.) The SFERP like the Trans Bay cable and the SFIA alternative does not provide for the closure of the Potrero 3 unit in and of itself so the Trans Bay Cable Project is the environmentally preferred alternative because it meets more of the projects objectives (minimizing the impacts of local generation) than the SFERP. The SFIA alternative is also superior to the SFERP because it would also reduce the impacts of local generation and increase reliability. None of the alternatives meet the CAISO conditions to shut down the Potrero Power Plant. The Commission must reject the SFERP unless the commission wishes to provide overriding considerations. (Cal. Code Regs., tit. 14 §15126.6).

If as the PMPD claimed the Commission has no "authority to determine the propriety of an action by the CAISO, a nonprofit public benefit corporation" then why

² See attached October 30, 2006 Reply of Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, NRG Energy, Inc., LS Power Generation, LLC, Constellation Commodities Group, Inc., Constellation NewEnergy, Inc. and Constellation Generation Group, LLC to Responses to Motion Regarding AB 1576 Implementation

then did the PMPD give such weight to the CAISO's "Action Plan" while giving what amounts to no weight to CARE's claims of discrimination against its members based on racial and economic discrimination by CCSF? CARE is also, a nonprofit public benefit corporation, and therefore this violates the "equal protection" mandates of the Federal and State Constitutions.

Respectfully submitted,



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Verification

I am an officer of the Intervening Corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1st day of November 2006, at Soquel, California.

A handwritten signature in cursive script that reads "Michael E. Boyd".

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate
Procurement Policies and Consider
Long-Term Procurement Plans.

Rulemaking 06-02-013
(Filed February 16, 2006)

**REPLY OF MIRANT CALIFORNIA, LLC, MIRANT DELTA, LLC, MIRANT
POTRERO, LLC, NRG ENERGY, INC., LS POWER GENERATION LLC,
CONSTELLATION COMMODITIES GROUP, INC., CONSTELLATION
NEWENERGY, INC. AND CONSTELLATION GENERATION GROUP, LLC
TO RESPONSES TO MOTION REGARDING AB 1576 IMPLEMENTATION**

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October 30, 2006

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NEWENERGY, INC. AND CONSTELLATION GENERATION GROUP, LLC TO
RESPONSES TO MOTION REGARDING AB 1576 IMPLEMENTATION**

Pursuant to Rule 11.1(f) of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), and with permission from Administrative Law Judge Carol Brown, which was granted by telephone on October 26, 2006, Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC ("Mirant"), NRG Energy, Inc., LS Power Generation LLC, Constellation Commodities Group, Inc., Constellation NewEnergy, Inc. and Constellation Generation Group, LLC (collectively, the "Joint Parties")¹ submit this reply to the responses to the Joint Parties' October 17, 2006 motion ("Motion") requesting a schedule for proposals on implementation of Assembly Bill 1576 ("AB 1576").

Each of the four parties who responded to the Motion objects to the creation of a separate procedural "track" to address AB 1576 implementation. Southern California Edison Company ("SCE") and Pacific Gas and Electric Company ("PG&E") argue that it would be burdensome and potentially inefficient and disruptive to evaluate AB 1576 implementation proposals on an expedited basis, and PG&E suggests that there is no need for expediency because developers are free to participate in the RFO process. San Diego Gas and Electric Company ("SDG&E") and Calpine Corporation ("Calpine") assert that there are no statutory implementation issues to consider in this proceeding, because AB 1576 only provides for rate recovery, and does not create any preference for repowered projects or provide for any change to the existing

¹ Pursuant to Rule 1.8(d), NRG Energy, Inc. LS Power Generation LLC, Constellation Commodities Group, Inc., Constellation NewEnergy, Inc., and Constellation Generation Group, LLC have authorized Mirant's representatives to tender these comments on behalf of all entities identified herein.

procurement process. According to Calpine, there is no need to consider AB 1576 rate recovery issues at all until *after* the Commission has approved the long-term procurement plans (“LTPPs”), and then only if a utility proposes to enter into a contract with a repowered project.

As set forth below, the responding parties’ arguments do not support denial of the Motion.

First, contrary to the assertions of SDG&E and Calpine, there is a need to implement AB 1576 in the context of the existing procurement process. AB 1576 was enacted to facilitate the repowering or replacement of strategically located, aging generating facilities with cleaner, more efficient facilities. AB 1576 recognizes that a number of aging facilities could be retired at a time when California’s need for electricity is growing, and reflects the Legislature’s finding that it is in the best interest of the state to encourage the replacement and repowering of those facilities due to their strategic location and existing infrastructure.² The Legislature further determined that the public interest would be served if such projects were developed, and therefore provides that an electrical corporation may recover the costs associated with a contract that facilitates such replacement or repowering, as long as the project meets specific criteria, one of which is that “the project provides electricity to consumers of this state at the cost of generating that electricity, including a reasonable return on the investment and the costs of financing the project.”³ AB 1576 therefore encourages repowering and replacement projects by providing for cost-based contracts with the utility.

These findings demonstrate that the development of replacement and repowered projects has been established as a priority, and that cost-based contracts between project developers and electrical corporations have been endorsed as a means to facilitate the necessary investment. What is not clear, however, is how cost-based contracts for repowered and replacement projects are provided for in the existing procurement process, and particularly the utilities’ upcoming filings for this new procurement plan cycle. For example, are the utility LTPPs anticipating AB 1576 projects? This should not be difficult or burdensome given the limited number of potential sites that are eligible under the statute. If the utilities do not provide for such resources in their upcoming filings, unnecessary and avoidable delays will result, which would ignore an

² See AB 1576, Section 1(a)-(g), available at http://www.leginfo.ca.gov/pub/bill/asm/ab_1551-1600/ab_1576_bill_20050929_chaptered.pdf.

³ Public Utilities Code section 454.6(b)(6); see also AB 1576, Section 1(g)-(h).

important aspect of the CEC's last IEPR cycle efforts concerning the impact of potential retirements on the installed capacity and reliability of the system. Put simply, from the planning perspective, the requirements of AB 1576 should be incorporated into the utility plans now given the utilities' intentions to pursue RFOs during the pendency of this case. To do otherwise creates the possibility that potential repowered or replacement capacity projects in areas with local reliability capacity concerns may be excluded altogether. Alternatively, failing to ensure that the requirements of AB 1576 are fully included in the ongoing LTPP planning and decision process at the outset could lead to a situation where the utilities procure specific resources now, only to argue later they should not be required to consider AB 1576 projects because their identified needs have been filled.

Moreover, it is not clear how a proposed cost-based repowering or replacement project proposed under AB 1576 would be evaluated in a utility RFO process, or how conformance with the statutory criteria would be assured in that context. The Assigned Commissioner's Ruling and Scoping Memo ("Scoping Memo") also asks whether AB 1576 projects should be pursued outside the RFO process.⁴ The Motion seeks to establish a process for answering those questions, and addressing other AB 1576 issues, in a timely and efficient manner by allowing all parties to submit their proposals for implementing AB 1576.

Second, the arguments of SDG&E and Calpine that AB 1576 is aimed solely at rate recovery and not at procurement are without merit. If the Legislature believed that the existing procurement process was sufficient to encourage and facilitate the repowering and replacement of the state's aging power plants, then it would not have seen the need to enact AB 1576. Given that the Legislature did enact AB 1576 after the Commission's AB 57 decision cited by Calpine, it must have been concerned that projects meeting the AB 1576 criteria would not otherwise be developed on a timely basis. Accordingly, it is important to take steps at the beginning of the new LTPP cycle to clarify how AB 1576 projects should be integrated into the procurement process in order to effectuate the statutory purpose.

Third, the fundamental question of how to integrate AB 1576 projects into the LTPPs should be addressed at the outset of that process, and should not be delayed until the process is finalized as the responding parties such as SCE suggest. Until the process applicable to AB 1576

⁴ Scoping Memo, Attachment A at 24.

projects is established, any procurement decisions or long-term commitments threaten to preclude procurement from projects eligible for AB 1576 treatment. That result would be contrary to the statute and the legislative intent. The Motion therefore seeks an up-front policy determination on AB 1576 that will provide a clear path for developing projects under the cost-based treatment contemplated in the statute.

Fourth, PG&E's argument that there are many "priority" issues to be addressed in this proceeding, and that none should receive special consideration, overlooks the fact that most other "priority" issues are the focus of separate proceedings where policy decisions either have been made, or will be made, before the LTPPs are evaluated and approved.⁵ In contrast, the topic of how to facilitate projects meeting the AB 1576 criteria is not being addressed in any other proceeding, and implementation of this statute has not been addressed before the Commission to date. While it may be true that the LTPP cycle is intended to have a certain "omnibus" function, there are a number of discrete subject areas that are being addressed on stand alone basis in other proceedings and then integrated into this proceeding. Rather than seeking to initiate some new proceeding focused only on the subject of AB 1576 implementation, the Motion seeks to address the requirements of this new statutory provision once, in the "umbrella proceeding," with the intent of addressing its implementation in a timely and administratively efficient manner.

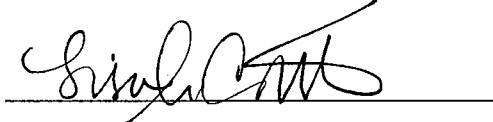
Finally, arguments against "bifurcation" and "fragmented" consideration of issues should be given little weight in light of the utilities' requests to allow for expedited consideration of their proposals to procure for anticipated need in 2008-2009. If anything, the arguments suggest that the utilities do not consider implementation of AB 1576 to be a priority issue, which further reinforces concern that projects meeting the AB 1576 criteria may not receive adequate consideration without a clear path for implementing the statute. Because the AB 1576 initial implementation issues are distinct from other procurement plan review issues to be addressed in this case, and because implementation of AB 1576 should be understood before the resource planning aspects of the proceeding are undertaken, parties will necessarily be addressing AB 1576 issues specifically and distinctly. Accordingly, in light of the practical implications of

⁵ As noted on page 9 of the Scoping Memo: "the Commission has initiated numerous other procurement related proceedings in the past few years to handle the specific program implementation requirements of renewables (RPS), energy efficiency (EE), demand response (DR), distributed generation (DG) and solar initiatives, avoided cost and qualified facilities (QF) issues, Department Water Resources (DWR) contract allocation, transmission, RA, confidentiality issues, greenhouse gas (GHG) and other related topics."

addressing this issue at the most logical and efficient time, complaints regarding bifurcation or fragmentation ring hollow and should be ignored.

For these reasons, and for the reasons set forth in the Motion, the Joint Parties reiterate their request that specific procedures be established to allow for the filing of proposals for implementing AB 1576 in this proceeding.

Respectfully submitted,



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LLC

October 30, 2006

Certificate of Service

I hereby certify that I have this day served a copy of the

***Reply of Mirant California, LLC, Mirant Delta, LLC, Mirant Potrero, LLC, NRG Energy, Inc., LS Power Generation, LLC, Constellation Commodities Group, Inc., Constellation NewEnergy, Inc. and Constellation Generation Group, LLC
to Responses to Motion Regarding AB 1576 Implementation***

on all known parties to R.06-02-013 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on October 30, 2006, at San Francisco, California.


Rosalie Marschall